

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

MICHAEL H. HOLLAND, et al.,)	
Plaintiffs,)	Civil Action No. 1:08cv00029
)	
v.)	<u>ORDER</u>
)	
EAST STAR MINING, INC.,)	BY: GLEN M. WILLIAMS
Defendant.)	SENIOR UNITED STATES DISTRICT JUDGE

This case is currently before the court on the Plaintiff's Motion for Summary Judgment, (Docket Item No. 10), ("Motion"). Jurisdiction is conferred upon this court pursuant to 28 U.S.C. § 1331, 29 U.S.C. § 185, 29 U.S.C. § 1132(e) and 26 U.S.C. § 9721. The Motion was referred, pursuant to 28 U.S.C. § 636(b)(1)(B), to the Honorable Pamela Meade Sargent, United States Magistrate Judge. On February 25, 2009, the Magistrate Judge entered a Report And Recommendation, (Docket Item No. 13), ("the Report"), recommending that the Motion be granted. The Magistrate Judge recommended that summary judgment be granted in favor of the plaintiffs in the amount of \$67,283.13 in unpaid contributions, \$2,850.20 (plus \$9.22 per day since December 31, 2008) in interest and liquidated damages in the amount of \$5,696.15 (plus \$6.83 per day since December 31, 2008). Objections to the Report were due by March 16, 2009; however, no objections were filed as to the substantive issues. Accordingly, with respect to the Magistrate Judge's recommendation to grant summary judgment, the Report shall be **ACCEPTED**.

However, there were objections to the Magistrate Judge's finding and

recommendation regarding the award of reasonable attorney's fees and costs under 29 U.S.C. § 1132(g)(2)(D). In the Report, the Magistrate Judge noted that attorney's fees and costs would not be awarded because the plaintiffs failed to produce evidence of the fees and costs incurred. (Report at 6-8.) After a review of the relevant filings, the undersigned agrees, as there is no evidence setting forth the total amount of attorney's fees and costs incurred. Consequently, without this evidence, the court cannot determine whether such fees and costs are reasonable.

For the reasons set out in the Report, the Motion is **GRANTED**. It is **FURTHER ORDERED** that the plaintiffs, in accordance with 29 U.S.C. § 1132(g)(2)(D), shall file evidence of their attorney's fees and costs within 14 days of this Order.

The Clerk is directed to enter this Order and send certified copies to all counsel of record.

ENTER: This 24th day of March 2009.

/s/ Glen M. Williams
SENIOR UNITED STATES DISTRICT JUDGE